

March 25, 2002

Mr. Matthew L. Erekson  
Laurel City Attorney  
P.O. Box 10  
Laurel, MT 59044

Dear Mr. Erekson:

You requested an Attorney General's Opinion regarding the question I have reworded as follows:

Is an employee entitled to holiday pay for holidays that occur while the employee is receiving temporary total or permanent total disability benefits under the Workers' Compensation Act?

Because your inquiry can be answered by reference to statutory authority and by a prior Attorney General's Opinion, it has been determined that a letter of advice, rather than a formal Attorney General's Opinion, provides the appropriate disposition.

In your opinion request you provide the following relevant information. A Laurel city employee was off work and receiving workers' compensation benefits in February 2001. While off work and receiving benefits, the employee requested compensation for President's Day, which is a paid city holiday. The City of Laurel denied the employee's request for holiday pay on the grounds that the employee was off work and receiving workers' compensation benefits. You also note in your opinion request that the same employee in 1999, although off work and receiving workers' compensation benefits, had applied for and *received* holiday pay.

In my opinion, pursuant to the plain language of the governing statutes, an employee who is off work and receiving workers' compensation benefits may not also receive payment of wages for a paid holiday that occurs while the employee is receiving benefits. I reach this conclusion because the Workers' Compensation Act prohibits a worker from receiving both wages and either temporary total or permanent total disability benefits.

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The Montana Workers' Compensation Act in effect at the time of a claimant's industrial accident is the law which governs his or her claim for benefits. Buckman v. Montana Deaconess Hosp., 224 Mont. 318, 321, 730 P.2d 380, 382 (1986). While you reference a specific example of an injured worker requesting holiday pay during a time when the worker is receiving workers' compensation benefits, you phrase your question generally. Thus, I will look to the current version of the Workers' Compensation Act in order to answer your question.

Under the current Workers' Compensation Act the term *wages* explicitly includes paid holidays. Wages are defined as "all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to: (a) commissions, bonuses, and remuneration at the regularly hourly rate for overtime work, holidays, vacations and periods of sickness." Mont. Code Ann. § 39-71-123. Part 7 of the Act, which governs compensation and benefits, prohibits a worker from receiving both wages and compensation benefits. Specifically Mont. Code Ann. §§ 39-71-701 and 702, which govern temporary total and permanent total disability benefits respectively, prohibit a worker from receiving both wages and disability benefits.

Mont. Code Ann. § 39-71-701(7) provides: "A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301." Similarly, Section 39-71-702(6) provides: "A worker may not receive both wages and permanent total disability benefits without consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Thus, interpreting the plain language of the governing statutes I would conclude that an employee is prohibited from receiving holiday pay for holidays that occur while the employee is receiving temporary total or permanent total disability benefits under the Workers' Compensation Act. See Dahl v. Uninsured Employers' Fund, 1999 MT 168, ¶ 16, 295 Mont. 173, 983 P.2d 363 (statutory language must be construed according to its plain meaning).

With your opinion request you also include the City of Laurel's Personnel Policy Manual and the Collective Bargaining Agreement between the City of Laurel and Local 316, which represents the employees of the City of Laurel. The Attorney General may not construe the language of a collective bargaining agreement. "Where the parties have

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entered into a collective bargaining agreement under which they agree to submit issues of contract interpretation to grievance and arbitration, the grievance procedure must be followed, and the issues cannot be addressed in the first instance in another forum. 45 Op. Att’y Gen. No. 21 (1993), citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 219-20 (1985). This letter, therefore, will not comment on the collective bargaining agreement. However, I would note the limiting rule of law: “When a particular employment condition for public employees has been legislatively set, it may not be modified through collective bargaining without statutory authorization.” 46 Op. Att’y Gen. No. 25 (1995).

Based upon the above analysis, it is my opinion that an employee is prohibited from receiving holiday pay for holidays that occur while the employee is receiving temporary total or permanent total disability benefits under the Workers’ Compensation Act.

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

ALI SHEPPARD  
Assistant Attorney General

as/jym